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Supreme Court of the United States

OCTOBER TERM, 1965

No. 1141 93

SENFOUR INVESTMENT CO., INC.,
Appellant,

v.

KING COUNTY,
a Legal Subdivision of the State of Washington,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

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Supreme Court of the United States

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SENFOUR INVESTMENT CO., INC.,
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KING COUNTY,
a Legal Subdivision of the State of Washington,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

This appeal is from the final judgment of the Supreme Court of Washington affirming the authority of one of its political subdivisions, King County, to levy and collect a tax upon the sale of property carried out in execution of the Trustee in Bankruptcy's plan authorized and confirmed by the Bankruptcy Court (Chapter X corporate reorganization proceedings), which sale constituted the final disposition and liquidation of the debtor following an adjudication of insolvency. Appellant submits this statement to show that the Supreme Court of the United

States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Washington, filed July 15, 1965 (66 Wn.2d 629) and the denial of the petition for re-hearing thereof on October 25, 1965, shown in the remittitur issued on the same date are reproduced in Appendix A hereto.

JURISDICTION

This suit was commenced in the Superior Court of the State of Washington for King County (Seattle) for the refund of real estate sales taxes paid by the Trustee under protest. The trial court granted summary judgment in favor of Senfour Investment Co., Inc., and the taxing authority, King County, appealed to the Supreme Court of Washington which by judgment becoming final on October 25, 1965, simultaneously with its denial of the petition for rehearing, reversed the judgment of trial court (Appendix A). Notice of this appeal was filed in that court on January 20, 1966. The jurisdiction of this Court to review that decision by direct appeal is conferred by 28 U.S.C. Sec. 1257(2). The finality of the judgment below reversing the summary judgment which had directed the refund of taxes, and the availability of review by appeal in this court are sustained by *Richfield Oil*

Corp. v. State Board of Equalization, 329 U.S. 69 (1946); *Local No. 438 v. Curry*, 371 U.S. 542 (1962); *Gospel Army v. Los Angeles*, 331 U.S. 543 (1947); *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62 (1948); *Rio Grand Western R. Co. v. Stringham*, 239 U.S. 44 (1915). The appropriateness of this appeal is further sustained by *California State Board of Equalization v. Goggin*, 191 F.2d 726 (9th Cir. 1951), certiorari denied 342 U.S. 909 (1951), *California State Board of Equalization v. Goggin*, 245 F.2d 44 (9th Cir. 1957); *Laurens Federal Savings & Loan Association v. South Carolina Tax Commission*, 365 U.S. 517 (1961); *Reconstruction Finance Corporation v. Beaver County*, 328 U.S. 204 (1946); *Eau Claire National Bank v. Jackman*, 204 U.S. 522 (1907); *Railway Express Agency, Inc. v. Virginia*, 347 U.S. 359 (1954); *Clark v. Williard*, 292 U.S. 112 (1934).

QUESTIONS PRESENTED

In proceedings for the reorganization of a debtor corporation (appellant's predecessor and assignor, the Heart of Seattle Hotel Co., Inc.) the United States District Court, Western District of Washington, entered an order adjudging the debtor corporation insolvent (R. 0009) and subsequently confirmed the trustees's amended plan for reorganization (R. 0015), which required the disposal by sale of all of the debtor's assets. The trustee carried out the plan and in the execution thereof, sold the hotel

premises to a corporation (the appellant, Senfour Investment Co., Inc.) formed pursuant to the plan for reorganization to purchase the assets of the debtor in order to consummate the plan. King County imposed the Washington State real estate sales tax upon the sale according to the provisions of Revised Code of Washington 28.45. The tax was paid under protest. Therefore:

1. Is the sale of the capital assets of an insolvent corporation in reorganization proceedings subject to state and local taxes (otherwise applicable to such sale) when that sale is carried out in execution of the plan confirmed by the Bankruptcy Court and constitutes the ultimate disposition of the debtor in the bankruptcy proceedings?

STATUTES INVOLVED

The statutes involved are 28. U.S.C. Sec. 960 and R.C.W. 28.45 (020.050.-080) which are set forth verbatim in Appendix B hereto.

STATEMENT

In February 1963 proceedings were commenced in the United States District Bankruptcy Court (Western District of Washington, Northern Division) for corporate reorganization of the Heart of Seattle Hotel Co., Inc. (No. 51268), a Seattle hotel company owning and operating a single hotel property in Seattle. On August 5, 1963, the United States District Bankrupty Court adjudi-

cated the debtor corporation insolvent (R. 0009) and on August 13, 1963, that court confirmed the trustee in bankruptcy's amended plan for reorganization (R. 0015) which provided for the sale of every asset of the debtor. (The trustee's amended plan is set forth in full as Appendix C hereto.) The proposed sale was carried out by the trustee, and as to the real property constituting the hotel premises the sale was made the object of an assessment of the real estate sales tax collected from the seller under the provisions of R.C.W. 28.45. The tax was paid under protest by the trustee in bankruptcy and subsequently an assignment of the tax refund claim was made to Senfour Investment Co., Inc.

This suit for refund taxes was commenced October 15, 1965 where in its complaint Senfour claimed exemption of the sale from taxation under provisions of the National Bankruptcy Act (R. 0002). In support of its motion for summary judgment in the trial court, Senfour urged that the sale was not subject to state and local taxation within the purport of 28 U.S.C. Sec. 960:

> "Any officers and agents conducting any business under authority of a United States Court shall be subject to all Federal, State and Local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation."

for the reason that it was in resolution of the reorganization rather than in the conduct of business. Summary judgment ordering the taxes refunded was entered on

July 17, 1964,[1] by the Superior Court of King County and an appeal was taken by King County. On appeal, Senfour argued as in the Superior Court, that the sale by the trustee had been made in execution of the judicial exercise of the paramount bankruptcy power of the United States in what was tantamount to liquidation of the debtor corporation (pertinent portions of Senfour's brief are reproduced in Appendix D hereto). The Washington Supreme Court, by its opinion filed July 15, 1965, and becoming final upon denial of the petition for re-hearing October 25, 1965, reversed the trial court, concluding that since reorganization contemplated something other than "regular bankruptcy," a sale, albeit a total sale after adjudication of insolvency and in execution of the plan, was not exempt from state and local taxation:

> "A chapter 10 reorganization is not in the true sense a bankruptcy and the corporation is regarded as a going concern, not defunct. . . . If, on the other hand, the reorganization plan is not acceptable to the court, the petition may be dismissed or transferred into regular bankruptcy for liquidation. This suggests a liquidation bankruptcy proceeding is different from a chapter 10 reorganization.
>
> "Obviously, Congress did not intend, under chapter 10 and these circumstances, to exclude the collection of this tax."

The Supreme Court of Washington acknowledged that no fact issue existed (Appendix A-1) thus rendering its

1. The prerequisite that there be no issue of material fact being present, Washington Court Rules, Pleading, Practice and Procedure 56, *Lundgren v. Kieren*, 64 Wn.2d 672, 393 P.2d 625 (1964).

decision a square challenge on the issues specified herein.

The Supreme Court of Washington also commented erroneously upon applicable Federal Law:

> ". . . Title 28, Section 960, amended later to Section 670 (11 U.S.C.) of the United States Code Annotated." (Appendix A-2)

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The judgment of the Supreme Court of Washington (1) that a trustee in bankruptcy's sale transferring the assets of the insolvent corporation in execution of the plan authorized and confirmed by the Bankruptcy Court, is subject to state and local taxation, and (2) that liquidation may not take place under proceedings initially commenced for the purpose of corporate reorganization, would if novel prepositions of law pose serious questions warranting full briefs, or argument in detailed considerations by this court. This is not necessary, however, because all of these matters, as hereinafter discussed, have been authoritively decided. Accordingly the judgment of the Supreme Court of Washington should be summarily reversed.

1. The decision of the Washington Supreme Court authorizing the imposition of a real estate sales tax upon the trustee in bankruptcy's sale of the debtor's capital assets, after adjudication of insolvency and in execution of the plan authorized and confirmed by the Bankruptcy

Court is in direct conflict with the decisions of the United States Court of Appeals (ninth circuit) in *California State Board of Equalization v. Goggin*, 191 F.2d 726 (9th Cir. (1951) certiorari denied. 342 U.S. 909 (1951) *California State Board of Equalization v. Goggin*, 245 F.2d 44 (9th Cir. 1957). See also *In re West Coast Cabinet Works*, 92 F. Supp. 636 (S. D. Cal. 1950).

The trustee's sale of the Heart of Seattle Hotel property, following the order of insolvency, was the final disposition of the insolvent corporation and constituted the execution of the Bankruptcy Court's essential function. The Court of Appeals in the *Goggin* cases predicated its ruling upon the nature of the sale: whether made in the conduct of the debtor's business, or in execution of the determination of the Bankruptcy Court in exercising the essential purpose of the bankruptcy laws. The United States Court of Appeals stated (in *California State Board of Equalization v. Goggin*, 245 F.2d 44 9th Cir. 1957):

> "The last time the problem came up in this court,[2] the taxing statute was in the exact terms which it now contains, as was the congressional law permitting officers of the Bankruptcy Court to pay taxes to the state for acts done in the conduct of the business. We then held that a state tax upon a sale of tangible property under order of the Bankruptcy Court directing liquidation was a levy upon the process of the Court of the United States and a burden upon its officers in an essential judicial function. . . .

2. This was in 1951, in *California State Board of Equalization v. Goggin*, 9th Cir. 191 F.2d 726, 27 A.L.R.2d 1211, *certiorari* denied, 242 U.S. 909.

"Essentially, as applied to a liquidation sale in bankruptcy, this tax constitutes a burden on the process of liquidation. . . .

"The rational of the opinions in the most recent decisions of this Court on this power is that any impost upon the essential liquidation process of the Bankruptcy Court is void. This has been the consistent policy and holding of the court. . . . The trial courts are entitled to rely upon such earlier pronouncements. . . . In practice, if the sales tax was levied upon the trustee, he would necessarily have passed the tax on to the purchaser. The same result is obtained by taxing the purchaser requiring a trustee to collecting the impost from the purchaser. All these devices are proscribed as to liquidating sales in bankruptcy.

"Whatever the protean forms of a statute may be, or whatever subtle ingenuity of legislative tax advisors suggest now or in the future, the tax is in fact upon the sale; the sale is for the essential purpose of liquidating; the liquidation process was burdened thereby. The paramount authority in a bankruptcy field can be limited only by Congress. But, since Congress has already designated sales in the course of operation of a business as the sole area where the state is permitted to impose a tax of any type, essential sales in liquidation are inevitably free from such imposition. . . .

. . .

"The former opinions of this court drew an exact distinction between sales 'in the conduct of any business' and sales in the liquidation of the bankrupt estate pursuant to court order. . . .

. . .

". . . Any act which hinders, delays or burdens the accomplishment of this vital purpose constitutes an unlawful interference with the process of the court of bankruptcy and is invalid. . . .

"Congress passed a specific statute relative to a trustee engaged in business in order to conform to the burdens borne by other members of a particular business communities. This enactment reads:

"'Any officers or agents conducting any business under authority of a United States Court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.' 28 U.S.C.A. §960.

"The trustee has paid sales tax or used taxes to the state during the period in which he operated the business of the County Stamping and Manufacturing Corporation for seven years under this statute. But the agents of the state are not satisfied, but desire to foster conflict between state and federal authorities. We admonished them in our former opinion that this is an unwise course of procedure. We said:

"'It would be unwise to foster conflict with Congress as manifested a desire for harmony. Any such conflict would necessarily entail an application of the fundamental doctrine that laws enacted pursuant to power delegated the United States under the constitution of the Supreme Law of the land, . . . Also to the doctrine that where problems in the sphere of dual sovereignty are involved, legislation should receive a construction which permits both to function with a minimum of interference with the other.' Citing *Metcalf and Eddy v. Mitchell,* 1926, 269 U.S. 514..."

The decision of the Supreme Court of Washington determining the applicability of federal law (28 U.S.C. Sec. 960) to a federal function (the trustee's sale under bankruptcy proceedings) is inimical to the initiative and power of the bankruptcy court in carrying out the reorganization of corporations, and challenges the authority

of the Federal Judiciary to determine the limits of state and local taxation upon that federal function.

Unarguably the sale by the trustee in bankruptcy in the Heart of Seattle Hotel matter, was not in the conduct of the business of the debtor but eminated from and was wholly in execution of the function of the bankruptcy court for the purposes of achieving the resolution of the reorganization.

2. The declaration of the Supreme Court of the State of Washington that liquidation may not be the end result of proceedings commenced for corporate reorganization is likewise in conflict with federal judicial determination.

> "In conclusion, we wish to point out that a plan of reorganization which does not return a debtor to its original stockholder is not *per se* objectionable and that reorganization may permissibly take the form of liquidation as was contemplated by the Sixty Trust Plan. See, for example, In re *Midland United Co.* (D.C. Del. 1944) 58 F. Supp. 667," *In re American Bantam Car Co.*, 193 F.2d 616 (3rd Cir. 1952).

That reorganization may take form of liquidation has elsewhere been held in *In re Chelsea Hotel Corp.*, 246 F.2d 133 (3rd Cir. 1957); *In re Automatic Washer Co.*, 226 F. Supp. 836 (D.C. Minn. 1964); *In re Hercules Service Parts Corp. v. U.S.*, 202 F.2d 938 (6th Cir. 1953).

The declaration by the Washington Supreme Court that 28 U.S.C. Sec. 960 has been amended to become 11

U.S.C. Sec. 670 (671) (Appendix A-2) is an ancillary erroneous declaration.

CONCLUSION

The imposition of the Washington real estate sales tax upon the Trustee in Bankruptcy's final disposition of the debtor after an adjudication of insolvency is patently within the doctrine of the *Goggin* cases (any distinction between "regular bankruptcies" and reorganizations notwithstanding). No useful purpose would be served by going over that ground again. Accordingly appellant urges that the judgment below be summarily reversed.

Respectfully submitted,

JEROME M. JOHNSON
ROBERT B. LESLIE
CROSON, JOHNSON & WHEELON
Attorneys for Senfour Investment Co., Inc.

March 11, 1966

APPENDIX A

Opinion of the Supreme Court of Washington of July 15, 1965 (66 Wn.2d 629, 404 P.2d 760)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SENFOUR INVESTMENT CO., INC., *Respondent*, v. KING COUNTY, a municipal corporation, *Appellant*.	No. 37840 Department One

BRADFORD, J.†—In this appeal, there is no dispute as to the facts. Jay G. Larson, acting as trustee in reorganization of the Heart of Seattle Hotel Co., Inc., under chapter 10 of the National Bankruptcy Act in the United States District Court, presented a plan for reorganization which was accepted and approved by the court. All of the petitioner's assets were transferred under this plan to Senfour Investment Co., Inc. The Federal District Court found, in its order approving the plan for reorganization, that the plaintiff corporation had been formed to purchase the assets of the debtor, Heart of Seattle Hotel Co., Inc., and that the debtor was insolvent. The defendant, King County, assessed a tax of $3,000 based on the value of the real property transferred, under

†Judge Bradford is serving as a judge *pro tempore* of the Supreme Court pursuant to Art. 4, § 2(a) (amendment 38), state constitution.

R.C.W. 28.45, which tax was paid under protest by Jay G. Larson and his claim was then assigned to the plaintiff. Plaintiff brought this action against the defendant alleging in its complaint "That the sale [of real estate] was pursuant to a plan of liquidation of the Heart of Seattle Hotel" and was immune from taxation under the National Bankruptcy Act. The defendant contends this transaction was an arrangement and is taxable under the terms of Title 28, §960, amended later to §670, of the United States Code Annotated.

The trial court held that Jay G. Larson was a liquidating trustee in bankrupty and §671 of the United States Code Annotated did not permit the levy of the tax. Judgment was for the plaintiff, permitting recovery of the tax paid under protest.

Section 671, Title 11, U.S.C.A., reads:

> "Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter and have not been assessed prior to the date of the confirmation of a plan under this chapter, and all taxes which may become owing to the United States or any State from a receiver or trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from and shall be paid by the debtor or the corporation organized or made use of for effectuating a plan under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any plan dealing with the

assumption, settlement, or payment of any such tax. . . ."

The original act to establish uniform bankruptcy was passed in 1898. During the depression of the early 1930's, it became apparent many businesses could be saved from liquidation if they were permitted to reorganize their affairs. In 1934, Congress passed the first corporate reorganization provision. The only amendment which has been made was the Chandler Act of 1938, which added these words: "or any State." There is considerable authority that Chapter 10 is a special proceeding, designed for a specific purpose apart from the rest of the bankruptcy act. See Collier on Bankruptcy; Remington on Bankruptcy; and Gerdes on Corporate Reorganization.

The fundamental purpose of Chapter 10 proceedings is the preservation of the *status quo*, thereby permitting an occasion for amicable adjustment by debtor and creditors under the supervision of the bankruptcy court, avoiding liquidation with a view to rehabilitation, thus affording an opportunity to plan reorganization without a race between creditors and maintaining at the same time a going concern value for all parties in interest. 11 Remington on Bankruptcy (1961 Revision by Hayes), §4345, p. 13; *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106 (1939), 84 L.Ed. 110, 60 Sup. Ct. 1; *In re Western Tool & Mfg. Co.*, 142 F.2d 404 (6th Cir. 1944).

A Chapter 10 reorganization is not in the true sense a bankruptcy and the corporation is regarded as a going concern, not defunct. *Petition of Portland Electric Power Co.*, 162 F.2d 618 (9th Cir. 1947); *In re American Coils Co.*, 74 F. Supp. 723 (D.C. New Jersey 1947). If, on the other hand, the reorganization plan is not acceptable to the court, the petition may be dismissed or transferred into regular bankruptcy for liquidation. After all, Congress had no intention of providing a haven for corporations which are fit subjects for liquidation by ordinary bankruptcy methods. Collier on Bankruptcy (14th ed.), Chapter 15.08, etc.; 11 Remington on Bankruptcy (1961 Revision by Hayes), §4654, p. 486; 3 Gerdes on Corporate Reorganization, §1143, p. 1815.

In Senate Report No. 1916 to accompany House Report No. 8046, Revision of the National Bankruptcy Act, 75th Congress, 3d Session, 1938, it is said:

> "[T]he dismissal of the proceedings, or alternatively, the liquidation of the debtor . . . in the event . . . that no plan of reorganization is confirmed and consummated. A prior bankruptcy proceeding is to be continued from the point where it was stayed by the reorganization proceeding. . . ."

This suggests a liquidation-bankruptcy proceeding is different from a Chapter 10 reorganization. Also in Senate Report No. 482 to accompany House Report No. 5884, To Amend the Bankruptcy Act—Corporate Reor-

ganization, 73d Congress, 2d Session, 1934, it was said:

> "The [reorganization] plan shall provide adequate means for its execution which may include the transfer of all or any part of the property of the debtor to another corporation or to other corporations. . . ."

Thus, a sale of all the assets within the plan was contemplated by Congress. Therefore, a total sale does not imply liquidation, as respondent suggests.

It is clear that Congress did not perceive a Chapter 10 reorganization and liquidation be the same. It is also clear that a sale of all the assets, as here, is within the Congressional intent. Therefore, respondent's liquidation theories do not apply. Obviously Congress did not intend, under Chapter 10 and these circumstances, to exclude the collection of this tax.

The judgment is reversed.

BRADFORD, J.
Pro Tem

WE CONCUR:
ROSELLINI, C.J.
OTT, J.
HUNTER, J.
HALE, J.

REMITTITUR

SENFOUR INVESTMENT CO., INC., *Respondent,* v. KING COUNTY, a municipal corporation, *Appellant.*	No. 37840 King County No. 609562

This is to certify that the opinion of the Supreme Court of the State of Washington filed on July 15, 1965, became the final judgment of this court in the above entitled case on October 25, 1965. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached certified copy of the opinion.

Pursuant to Rule 55 on Appeals, costs are taxed as follows:

One hundred forty-six and 73/100 ($146.73) dollars in favor of appellant and against respondent.

The Petition for Rehearing was denied by an Order dated October 25, 1965.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 25th day of October, A.D. 1965.

WILLIAM M. LOWRY
Clerk of the Supreme Court,
State of Washington

cc: COURT REPORTER
HON. CHARLES O. CARROLL
MR. JAMES E. KENNEDY
MR. WILLIAM L. PAUL, JR.
CROSON, JOHNSON & WHEELON
MR. ROBERT B. LESLIE

APPENDIX B

Pertinent Sections of Revised Code of Washington 28.45

28.45.020 "Seller" defined. As used in this chapter and in any ordinance enacted pursuant thereto, the term "seller," unless otherwise indicated by the context, shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, quasimunicipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, but it shall not include the United States or the state of Washington.

28.45.050 Levy of Tax—Rate—Disposition of Proceeds. The county commissioners of any county are authorized by ordinance to levy an excise tax upon sales of real estate not exceeding one percent of the selling price. The rate of the levy shall be determined annually by the commissioners. The proceeds of the tax provided for in this chapter shall be placed in the county school fund and shall be used exclusively for the support of the common schools: Provided, That one percent of the proceeds of the tax provided for herein may be placed in the current expense fund of the county.

28.45.060 Tax on Sale of Property Located in County.

The real estate sales tax provided for herein shall be levied upon each sale of real property located within the county.

28.45.070 Tax Is Lien on Property—Enforcement. The tax herein provided for and any interest or penalties thereon shall be a specific lien upon each piece of property sold from the time of sale until the tax shall have been paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

28.45.080 Tax Is Seller's Obligation—Choice of Remedies. The tax levied under this chapter shall be the obligation of the seller and the county treasurer may, at his option, enforce the obligation through an action of debt against the seller or he may proceed in the manner prescribed for the foreclosure of mortgages and resort to one course of enforcement shall not be an election not to pursue the other.

APPENDIX C

The Trustee in Bankruptcy's Amended Plan for Reorganization

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

IN PROCEEDINGS FOR CORPORATE REORGANIZATION

In the Matter of HEART OF SEATTLE HOTEL CO., INC., *Debtor.*	No. 51268

TRUSTEE'S PROPOSED AMENDED PLAN FOR REORGANIZATION

To the HONORABLE WILLIAM J. LINDBERG, *District Judge:*

Comes now JAY G. LARSON, the duly qualified and acting Trustee herein, and proposes the following Amended Plan for Reorganization of the Debtor:

That a third party, corporate or otherwise, purchase from the Trustee all of the assets of Heart of Seattle Hotel Co., Inc., and Heart of Seattle Hotel Operating Co., Inc., the combined debtor, including not only its tangible or fixed assets but also its notes, subscription receivables, sales tax refund, and all other assets of every kind and description for the following consideration:

(1) Payment in full of the claims of unsecured creditors as follows: A sum of cash equal to one-half of the un-

secured claims, believed to be not more than $55,000.00, plus non-negotiable, non-interest bearing notes payable to said creditors for the balance of their claims, payable in two installments of 25%, one year apart, to be guaranteed by the company purchasing the assets of the debtor.

(2) Cash sufficient to pay all costs of administration and fees in reorganization, including the receiver's certificate to Norman Conkle for $5,000.00, delinquent taxes believed to be in the vicinity of $28,000.00, wage liens believed to be in the vicinity of $7,700.00; materialmen's liens believed to be in the vicinity of $13,400.00 and all delinquent payments on leases to Glickman, Moulas, Rosen Guthrie and Business Machines, believed to be in the vicinity of $5,300.00.

(3) The foregoing purchase shall be subject to the following contract and mortgages at whatever balances and in whatever state of delinquency they may be at the time of transfer:

(a) The present mortgage to Mid-Continent Investment Company now held by Exchange Bank & Trust Company in the face amount of $750,000.00.

(b) The Kamins Furniture chattel mortgage, now held by American Acceptance Corporation in the face amount of $180,087.76, on which there remains a claimed balance of $165,113.16.

(c) Conditional sale contracts wherein Dohrmann Hotel Supply Company is the vendor, upon which there is a claimed past due balance of $41,422.89.

Respectfully submitted,
JAY G. LARSON,
Trustee

APPENDIX D

Excerpt from Brief of Senfour Investment Co., Inc., to the Washington Supreme Court (Pages 7, 8)

Conversely, sales winding up the debtor's business, disposing of his assets pursuant to the court's order to so liquidate are not within the purview of §960 because now the court in finally disposing of the debtor is directly engaged in executing through the trustee in bankruptcy the bankruptcy power of the United States and such is an act of the United States and any tax upon this judicial process is tantamount to a tax upon the United States. *California State Board of Equalization v. Goggin*, (9th Cir. 1957), 245 F.2d 44, 45. The instant sale thus falls within the rule, *viz.*, the trustee's proposed plan (St. 2), the order of the U. S. District Court confirming the plan (St. 1), the affidavit of the trustee in bankruptcy (St. 4), show that the sale of the Heart of Seattle Hotel Company site by the trustee in bankruptcy constituted irrefutably an abolition of the business operations and existence of the debtor, a sale of all of its assets subsequent to adjudication of insolvency and was made directly pursuant to the court's order to so dispose of the debtor corporation in execution of the plan of reorganization.

Assuming for purposes of argument that this sale was not technically a liquidation, the rationale given for exempting sales in "liquidation" from the provisions of §960

is as eminently present in this case. As distinguished from a sale by the trustee when carrying on the business of the debtor (only incidentally under the authority of the United States), the instant sale was the execution, in fact the consummation, of the ultimate disposition of the debtor ordered by the Bankruptcy Court and hence constituted a deliberate exercise of the judicial function of the federal court. The tax for which appellant contends in such instance becomes a tax upon the essential process of the United States.